



Paper No. 32

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**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of :  
Rueger et al. :  
Application No. 08/937,756 :  
Filed: September 25, 1997 :  
Attorney's Docket No. 00960-504 FWCCON2 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on January 10, 2002 (Certificate of Mailing date November 7, 2001),<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

A final Office Action was mailed on September 25, 2000. Applicants filed a proposed amendment on March 26, 2001 (Monday) along with a request for a 3-month extension of time. As indicated in the June 6, 2001 Advisory Action by the examiner, the proposed amendment did not place the application in condition for allowance and thus was not entered. Consequently, this application became abandoned on March 26, 2001<sup>2</sup> for failure to timely submit a proper reply to the September 25, 2000 final Office Action.

On June 29, 2001, Applicants filed a petition under 37 CFR 1.137(b) to revive this application, accompanied by a second proposed amendment which again was denied entry by the examiner because it did not place the application in condition for allowance. That petition was dismissed on August 7, 2001.<sup>3</sup>

The instant petition includes a Notice of Appeal as reply to the September 25, 2000 final Office Action,<sup>4</sup> a third proposed amendment, a request for a 1-month extension of time for filing these

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<sup>1</sup> 37 CFR 1.8(a)(1).

<sup>2</sup> The 3-month extension of time extended the due date for the reply to 3/25/01, a Sunday. Under 37 CFR 1.7(a), a reply filed on 3/26/01, the following Monday, would have been considered timely. The 3/26/01 reply was considered "timely," but was not responsive to the 9/25/00 final Office Action. The application thus became abandoned as of 3/26/01. See 37 CFR 1.135; MPEP 711.04(a) (Aug. 2001): "[T]he date of abandonment is after midnight of the date on which the set shortened statutory period, including any [obtained] extensions under 37 CFR 1.136, expired." The 8/7/01 Decision (Paper No. 25) inadvertently indicated a date of abandonment of 3/27/01.

<sup>3</sup> See Paper No. 25.

<sup>4</sup> MPEP 711.03(c)(III)(A)(2)(b) (Aug. 2001).

items; and in effect states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. In addition, the \$320 fee for filing the Notice of Appeal and the \$110 for the 1-month extension of time are enclosed.<sup>5</sup> The instant petition is thus granted.

Under 37 CFR 1.192, **Applicants must file an Appeal Brief within two (2) months from the mailing date of this decision** to avoid dismissal of the appeal, and consequently abandonment of this application since no claims stand allowed in this application.<sup>6</sup> This 2-month period is extendable under 37 CFR 1.136.<sup>7</sup>

Finally, a power of attorney<sup>8</sup> and a request to change the correspondence address for this application were filed on September 4, 2001 (9/4/01 submission") on behalf of a Curis, Inc., presumably the assignee of entire interest for this application. However, there is no assignee-of-record in the official records for this application; neither does the 9/4/01 submission provide the requisite information under 37 CFR 3.73 for establishing ownership of this application by Curis, Inc., and accordingly, right by Curis, Inc. to prosecute this application before the PTO.<sup>9</sup> The 9/4/01 submission is therefore not entered. While a courtesy copy of this decision is being mailed

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<sup>5</sup> A duplicate charge of \$320 and a \$920 for an additional 3-month extension of time were erroneously charged to Deposit Account No. 18-1945 on 1/11/02, and have been credited to the same account.

<sup>6</sup> See MPEP 710.02(d) (Aug. 2001).

<sup>7</sup> *Id.* (The 2-month non-statutory period is extendable for up to 5 months under 37 CFR 1.136(a), and is further extendable under 37 CFR 1.136(b) in exceptional situations.).

<sup>8</sup> General Revocation of Prior Powers of Attorney and Appointment of New Power of Attorney or Authorization of Agents.

<sup>9</sup> 37 CFR 3.71 ((a) [A]ssignees . . . may, after becoming of record . . . conduct prosecution of a . . . patent application . . . to the exclusion of either the inventive entity or [prior] assignee(s) . . . (c) An assignee becomes of record . . . by filing a statement in compliance with 37 CFR 3.73(b) that is signed by a party authorized to act on behalf of the assignee.).

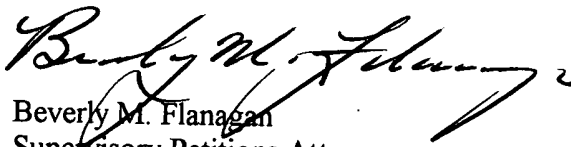
37 CFR 3.73(b)(1) (In order to request or take action in a patent . . . matter, the assignee must establish its ownership of the [application] . . . by submitting a signed statement identifying the assignee, . . . accompanied by . . . documentary evidence of a chain of title from the original owner to the assignee . . . ; or a statement specifying where documentary evidence of [such] a chain of title . . . is recorded in the PTO, e.g., reel and frame numbers of the recorded assignment . . .).

Also see MPEP 402.07 (Aug. 2001) (A power of attorney by the assignee of the entire interest revokes all powers given by the applicant and prior assignees if the assignee establishes its right to take action as provided in 37 CFR 3.73(b)).

to the practitioner signing the instant petition, all future correspondence on this application will be directed to the address currently of record unless the Office is properly instructed otherwise.<sup>10</sup>

The application is being forwarded to Technology Center 1600 to await submission of the appeal brief.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



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<sup>10</sup> See 37 CFR 3.73 and MPEP 601.03 (Aug. 2001) for guidance. The new power of attorney and change of correspondence address may be filed along with the appeal brief.